



House of Representatives

General Assembly

File No. 831

January Session, 2001

Substitute Senate Bill No. 617

House of Representatives, May 29, 2001

The Committee on Banks reported through REP. DOYLE of the 28th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-200 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) For the purposes of this section and sections 42-201 to [42-206]
4 42-207, inclusive, a funeral service contract means a contract which
5 requires the payment of money or the delivery of securities in
6 exchange for the final disposition of a dead human body, including
7 funeral, burial or other services, or the furnishing of personal property
8 or funeral merchandise in connection with any such disposition,
9 wherein the use or delivery of such services, property or merchandise
10 is not required immediately.

11 (b) A funeral service contract shall contain: (1) A consumer notice as
12 set forth in subsection (c) of this section; (2) the name, business address

13 and telephone number of the escrow agent who will administer the
14 consumer's funds; (3) a statement advising the consumer to avoid
15 fraud by contacting the escrow agent to verify the disposition of such
16 funds (A) if the consumer has not received verification from the
17 escrow agent as provided in section 42-202, as amended by this act, not
18 later than forty-five days after signing the funeral service contract, that
19 the escrow agent has deposited the consumer's funds, or (B) if the
20 consumer fails to receive an annual statement of the consumer's
21 account; (4) if applicable, a clear and conspicuous statement that the
22 consumer may be liable for additional funds for such contracted
23 services, property or merchandise; and (5) a clear and conspicuous
24 statement as to whether the funeral service contract is revocable or
25 irrevocable together with an explanation of the term revocable or
26 irrevocable, as applicable.

27 (c) The consumer notice shall be on a separate page and in a form
28 substantially similar to the following:

29 "A funeral service contract ensures, upon payment of a sum of
30 money, that the funeral service establishment will provide certain
31 funeral services, property or merchandise at a future date.

32 If you purchase a funeral service contract, you must receive (1)
33 notice of the investment options offered by the funeral service
34 establishment; (2) a statement of the fees charged by the escrow agent
35 (the person who will be holding your funds), if any, to the escrow
36 account or to you for investing and managing such funds; and (3) a
37 statement concerning the transferability of the funds to other
38 investment options and whether the funeral director, association of
39 funeral directors or other entity may share compensation from the
40 escrow agent.

41 An escrow agent must be either a bank, a licensed insurance
42 company, a savings and loan association or a registered broker-dealer.

43 You must receive an annual statement of income and expenses for
44 the escrow funds.

45 The funeral service contract must provide that if specified
46 merchandise is not available, only merchandise of at least equal quality
47 and similar style may be substituted.

48 It is important for you to:

49 (A) Verify the services, property and merchandise that are to be
50 provided as part of the funeral;

51 (B) Ensure that the costs of the services, property and merchandise
52 are explained;

53 (C) Verify whether you will need to provide any additional money
54 for such services, property and merchandise;

55 (D) Determine who will receive any surplus funds in the event the
56 funds in the escrow account exceed the cost of the contracted funeral
57 services, property and merchandise;

58 (E) Obtain the name, address and telephone number of the person
59 who will be holding your funds (known as an escrow agent);

60 (F) Contact the escrow agent if, by the forty-fifth day after you sign
61 the funeral service contract, you do not receive verification that the
62 escrow agent has received and deposited your funds."

63 Sec. 2. Section 42-201 of the general statutes is repealed and the
64 following is substituted in lieu thereof:

65 (a) No person, firm or corporation shall enter into a funeral service
66 contract to provide such services, property or merchandise unless such
67 person, firm or corporation is licensed in accordance with the
68 provisions of chapter 385. No person may arrange, promote or sell any
69 funeral service contract on behalf of a funeral service establishment

70 unless such person is an embalmer or funeral director licensed in
71 accordance with the provisions of chapter 385 and bonded in
72 accordance with subsection (b) of this section.

73 (b) Each funeral service establishment that enters into a funeral
74 service contract to provide such service, property or merchandise or
75 arranges, promotes or sells a funeral service contract shall obtain a
76 bond written by a surety authorized to write such bonds in this state,
77 of a sum of not less than fifty thousand dollars, except that any owner
78 of not less than five nor more than nine funeral service establishments
79 shall provide a bond or series of bonds of a sum not less than two
80 hundred and fifty thousand dollars and any owner of not less than ten
81 nor more than fourteen funeral establishments shall provide a bond or
82 series of bonds of a sum not less than five hundred thousand dollars
83 and any owner of fifteen or more funeral establishments shall provide
84 a bond or series of bonds of a sum of not less than one million dollars.
85 Such bond or bonds shall be conditioned upon such establishment
86 truly and faithfully accounting for all funds received relative to a
87 funeral service contract.

88 (c) Any person damaged by the wrongful conversion of funds paid
89 for a funeral service contract may proceed on such bond against the
90 principal or surety thereon, or both, to recover damages, which shall
91 include reasonable attorneys' fees.

92 Sec. 3. Section 42-202 of the general statutes is repealed and the
93 following is substituted in lieu thereof:

94 (a) A licensed funeral service establishment shall deposit any money
95 or securities [which] that such establishment receives pursuant to a
96 funeral service contract [, and within] not later than fifteen days [of]
97 after its receipt of such money or securities, in one or more escrow
98 accounts established in accordance with the provisions of this section.
99 Not later than thirty days after receiving funds from a licensed funeral
100 service establishment, the escrow agent shall send the consumer

101 written verification that the funds have been deposited in accordance
102 with the provisions of this section.

103 (b) (1) Each escrow account established pursuant to this section shall
104 be administered and maintained by an escrow agent [. The funeral
105 service establishment which deposits money or securities in such
106 escrow account shall appoint such agent who] designated in the
107 funeral service contract.

108 (2) The funeral service establishment shall enter into a contract with
109 the escrow agent designated in the funeral service contract, either
110 directly or through an association of funeral directors or other entity.
111 Such contract with the escrow agent shall contain provisions that (A)
112 clearly indicate all fees to be charged by the escrow agent to the escrow
113 account and whether or not any portion of such fees will be shared
114 with any association of funeral directors or other entity, and (B)
115 explain the duties and responsibilities of the escrow agent, including,
116 but not limited to, a provision stating that the escrow agent may only
117 invest such funds in accordance with the provisions of subsection (c) of
118 this section and may only dispense such funds in accordance with the
119 provisions of this chapter. A copy of the contract shall be provided to
120 the purchaser of funeral services, property or merchandise upon
121 request.

122 (3) A designated escrow agent shall be one of the following: [(1)] (A)
123 A national banking association; [(2)] (B) a state bank and trust
124 company; [(3)] (C) a federal or state chartered savings bank; [(4)] (D) a
125 federal or state chartered savings and loan association; [(5)] (E) a
126 licensed insurance company; [,] or [(6)] (F) a registered broker-dealer.
127 [No such institution shall be appointed as an agent unless such
128 institution is authorized by law to act as an escrow agent.]

129 (c) Assets held in escrow accounts established pursuant to this
130 section shall be invested in one or more of the following: (1) Deposit
131 accounts insured by the Federal Deposit Insurance Corporation; (2)

132 accounts insured against loss of principal by an agency or
133 instrumentality of the United States government; (3) bonds in which
134 savings banks in this state may, by law, invest; (4) bonds of the United
135 States or any agency thereof or of this state or any municipality of this
136 state; or (5) any other deposit account, insurance contract, or security
137 of a quality, safety and expense comparable to those set forth in this
138 subsection.

139 (d) All interest, dividends and other income earned on the amounts
140 deposited in an escrow account pursuant to this section shall be
141 retained in such escrow account and credited, less any administration
142 expenses, to the respective interests of those persons for whose benefit
143 the escrow account is maintained. Amounts in an escrow account shall
144 be removed from such account only as provided in sections 42-200 to
145 [42-206] 42-207, inclusive, as amended by this act. Each party to a
146 funeral service contract shall receive an annual statement of the
147 [amount] amounts credited and the amount of all expenses charged to
148 such party's escrow account, and the annual rate of return on such
149 funds after expenses. Such statement shall include the name and
150 address of the escrow agent.

151 (e) If a purchaser of funeral services, property or merchandise
152 defaults in making payments required under the terms of such
153 contract, or if the purchaser or the person responsible for making
154 funeral arrangements for a deceased beneficiary under section 45a-318
155 fails to have the funeral service establishment provide services, the
156 funeral service establishment may retain any origination fee and any
157 costs actually and reasonably incurred by such establishment in the
158 performance of the contract as liquidated damages, provided the sum
159 of the amount retained as an origination fee and the amount retained
160 to pay for costs incurred by the funeral establishment in the
161 performance of the contract shall not exceed an amount equal to five
162 per cent of the amount in the escrow account at the time the purchaser
163 of funeral services defaults in making such payments, and provided

164 further that the funeral service contract specifically allows for such
165 liquidated damages. The balance of any amount remaining in the
166 escrow account shall be paid by the escrow agent to such purchaser,
167 [upon request.]

168 (f) A person, firm or corporation licensed in accordance with the
169 provisions of chapter 385 which enters into a funeral service contract
170 shall furnish the agent of an escrow account established in accordance
171 with the provisions of this section with the name of the purchaser of
172 such services, property or merchandise, the address and name of the
173 beneficiary of the funeral service contract and the amount contracted
174 for, [together with a copy of the contract listing the services, personal
175 property or merchandise to be furnished by the funeral service
176 establishment.] Nothing in this section shall prohibit the commingling
177 within an escrow account of the money or securities received under
178 more than one funeral service contract for the purpose of management
179 and investment of funds in such escrow account provided the escrow
180 agent maintains a separate accounting of each escrow account.

181 (g) A funeral service contract shall provide that, if the particular
182 merchandise provided for in the contract is not available at the time of
183 death, the funeral service establishment shall furnish merchandise
184 similar in style and at least equal in quality of material and
185 workmanship to the merchandise provided for in the contract.

186 Sec. 4. Section 42-203 of the general statutes is repealed and the
187 following is substituted in lieu thereof:

188 Funds held in an escrow account in accordance with the provisions
189 of a funeral service contract shall remain intact unless such funds are
190 commingled in accordance with the provisions of subsection (f) of
191 section 42-202, as amended by this act, or the purchaser of funeral
192 services, property or merchandise defaults in making payments
193 required under the terms of the contract, as provided in subsection (e)
194 of section 42-202, as amended by this act, or until the services

195 contracted for have been performed or the contracted for property or
196 merchandise has been delivered. Upon submission to the escrow
197 agent, by the funeral service establishment, of [proof] an affidavit by
198 the person responsible for making funeral service arrangements for a
199 deceased beneficiary that the services, personal property and
200 merchandise contracted for have been fully performed or delivered,
201 the escrow agent shall pay to such funeral service establishment the
202 amounts [deposited therein pursuant to such funeral service contract,
203 and all income earned thereon and retained in the escrow account]
204 duly charged for such rendered services, personal property or
205 merchandise. The escrow agent shall transfer any surplus funds to the
206 purchaser's estate unless the contract provides otherwise. If, for any
207 reason, the funeral service establishment which has entered into a
208 funeral service contract for the sale of services, personal property, or
209 merchandise and which has deposited the funds into an escrow
210 account in accordance with the provisions of sections 42-200 to [42-206]
211 42-207, inclusive, as amended by this act, fails to meet its obligation
212 under such contract promptly after the death of the person to be
213 benefited, the [family, the next of kin, or the legal representative of the
214 deceased] person responsible for making funeral arrangements for a
215 deceased beneficiary, having provided for such services, personal
216 property or merchandise on behalf of the deceased person, [may] shall
217 receive from the escrow agent the amount [of money in such escrow
218 account] charged for such services, personal property or merchandise.
219 An affidavit [which] that states [that] services have been performed or
220 property delivered, signed by [a member of the family, next of kin, or
221 legal representative of the deceased] the person responsible for making
222 funeral arrangements for a deceased beneficiary, and by the funeral
223 service establishment which has provided such services, personal
224 property or merchandise, and which is delivered to the escrow agent
225 shall be sufficient to authorize an escrow agent, acting alone, to make
226 such payment without liability to the person making the deposit of
227 such money into the escrow account or to any other person. Nothing

228 contained in this section shall relieve the funeral service establishment
229 of its liability for nonperformance.

230 Sec. 5. Section 42-207 of the general statutes is repealed and the
231 following is substituted in lieu thereof:

232 An irrevocable funeral service contract may be entered into in which
233 the amount held in escrow may be disbursed only upon the death of
234 the beneficiary and upon submission by the funeral service
235 establishment of an affidavit by the person responsible for making
236 funeral arrangements for a deceased beneficiary that the services,
237 personal property or merchandise contracted for have been fully
238 performed or delivered, provided such a contract does not exceed five
239 thousand four hundred dollars and all interest accumulates to the
240 escrow account and is inaccessible to the beneficiary. Such irrevocable
241 funeral service contracts may be transferred from one funeral service
242 establishment to another upon request of the beneficiary. The purchase
243 of an irrevocable funeral service contract shall not preclude an
244 individual from purchasing other funeral service contracts that are
245 revocable.

BA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See Explanation Below

Affected Agencies: Department of Consumer Protection,
Department of Social Services

Municipal Impact: None

Explanation**State Impact:**

The bill requires a funeral director selling irrevocable funeral service contracts to: 1) obtain a bond from a company authorized to write bonds in the state; 2) disclose certain information; 3) place requirements on the contracts between funeral homes and escrow agents. These changes may result in a minimal workload increase to the Department of Consumer Protection, which can be handled within the normal budgetary resources.

Additionally, the bill requires that any funds remaining in the irrevocable funeral service escrow account of a Medicaid recipient after all funeral and burial expenses have been paid in full, must be paid to the person responsible for making the funeral arrangements. This results in no fiscal impact to the state.

OLR Bill Analysis

sSB 617

AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS.

SUMMARY:

This bill:

1. requires pre-need funeral contracts to contain specified disclosures;
2. requires funeral home owners, before selling the contracts, to post a bond, or series of bonds in varying amounts depending on the number of homes they own;
3. requires escrow agents who administer the consumers' funds to give certain notices to consumers;
4. requires a contract between the funeral home and the escrow agent and specifies what it must contain;
5. requires additional disclosures on the annual account statements; and
6. requires that funds remaining in the account after the funeral be turned over to the person responsible for making the funeral arrangements.

Finally, the bill makes minor and technical changes.

EFFECTIVE DATE: October 1, 2001

CONTRACT DISCLOSURES

The bill requires a pre-need funeral contract to contain:

1. a consumer notice as specified below;

2. the name, business address, and phone number of the escrow agent who will administer the funds;
3. a statement advising the consumer to avoid fraud by contacting the escrow agent to verify what has happened to the funds if he does not receive (a) verification that the agent has deposited the funds within 45 days after the consumer signs the funeral service contract or (b) an annual account statement; and
4. clear and conspicuous statements if applicable, (a) as to whether the contract is revocable or irrevocable and an explanation of these terms, and (b) that the consumer may owe additional funds for the contracted services or items.

The bill removes a requirement that the escrow agent receive a copy of the contract listing the services, personal property, or merchandise the funeral home furnishes.

CONSUMER NOTICE

The bill requires the consumer notice to be on a separate page and specifies most of what it must say. The notice must describe what a funeral service contract is. It must describe the information the consumer must receive, including investment options the home offers, and a statement of the fee the escrow agent charges, either to the escrow account or the consumer, for investment and management fees. It must disclose whether the funds can be transferred to other investments and whether the funeral director, association of funeral directors, or other entity may share compensation from the escrow agent.

The notice must inform the consumer that (1) an escrow agent must be either a bank, a licensed insurance company, a savings and loan association, or a registered broker-dealer and (2) the consumer must receive an annual statement of income and expenses for the escrow funds. It must also state that the contract must provide that if specified merchandise is not available, only merchandise of at least equal quality and similar style can be substituted.

The notice must state that it is important for the consumer to:

1. verify the services, property, and merchandise to be provided and ensure that their costs are explained;
2. verify whether he will need to pay any additional money for the services, property, and merchandise;
3. determine who will receive surplus funds if the funds in the account exceed the contracted funeral cost;
4. obtain the name, address, and phone number of the escrow agent; and
5. contact the escrow agent if, by the 45th day after signing the contract, the consumer does not receive verification that the escrow agent has received and deposited the funds.

SURETY BOND

The bill requires each funeral home to obtain a surety bond of at least \$50,000 before entering into, arranging, promoting, or selling pre-need funeral service contracts. Owners of between five and nine funeral homes must provide a surety bond, or series of bonds, of at least \$250,000; owners of between 10 and 14 funeral homes must provide a bond, or series of bonds, of at least \$500,000; and owners of 15 or more funeral homes must provide a bond, or series of bonds, of at least \$1 million. The bonds must be conditioned on the funeral home truly and faithfully accounting for all funds it receives for such contracts. The bill gives anyone damaged by the wrongful conversion of such funds the right to sue on the bonds to recover damages, including reasonable attorneys' fees.

NEW ESCROW AGENT REQUIREMENTS

The bill gives the escrow agent, who must be designated in the funeral contract, 30 days after receiving funds from a funeral home to send the consumer written verification that he has deposited the funds as required.

The bill requires the funeral home to contract with the designated escrow agent, either directly, through a funeral directors' association, or through another entity. The law requires a home to appoint an agent. The contract must contain provisions that:

1. clearly indicate all the escrow agent's fees and whether any funeral directors' association or other entity will share any part of the fees and
2. explain the escrow agent's duties, including that the agent may only invest and disburse the funds according to existing statutory requirements.

Under the bill, the consumer must receive a copy of this contract upon request.

The bill removes the requirement that funeral homes appoint as escrow agents only those institutions legally authorized to act as agents.

ANNUAL STATEMENT

The bill adds the expenses charged to the account and the annual rate of return after expenses to the information that must be included in the annual statement.

DEFAULT

Under current law, if the purchaser defaults on the contract or fails to have the funeral home provide services, the funeral home can collect any origination fee and costs it reasonably incurs as damages, up to 5% of the amount in escrow. The bill allows this only if the contract specifically allows for such collection. By law, the balance must be returned to the purchaser. The bill specifies it is the escrow agent who must return the balance, and it eliminates the requirement that the purchaser ask for it.

COMMINGLING OF FUNDS

Current law allows the escrow agent to commingle funds for more

than one funeral contract within an escrow account. The bill continues to allow this, but it requires the agent to maintain a separate accounting for each escrow account.

ACCOUNT SURPLUS FUNDS

Current law requires the escrow agent, when the funeral home submits proof that the services and items contracted for have been provided, to pay the principal and interest in the account to the home. The bill instead requires the agent to pay the funeral home only the amounts it charged for the services, and requires him to transfer the remainder to the purchaser's estate unless the contract provides otherwise. Further, the bill requires that the proof the funeral home offers be in the form of an affidavit by the person responsible for making the funeral arrangements.

If the funeral home fails to promptly provide the services required in the contract, the bill requires the escrow agent to give the amount charged for the services, property, or merchandise to the person who actually provided for them on behalf of the deceased. Current law permits the escrow agent to give the money in the escrow account to the deceased's family or next of kin in such a situation, but does not require it.

BACKGROUND

Pre-Need Funeral Contracts

By law, funeral homes may contract with consumers in advance to provide services and products for a funeral. These contracts can be revocable or, if their value does not exceed \$5,400, irrevocable. The law requires funeral homes to place the money the consumer pays on such a contract in an escrow account administered by an escrow agent, which must be a bank, insurance company, or registered broker-dealer. It places restrictions on what the funds can be invested in, requires each party to the contract to receive an annual statement, and sets other procedures for handling the escrow accounts and what to do in case of defaults on either side.

Legislative History

The House referred the bill (File 685) to the Banks Committee on May 23. The committee favorably reported the bill on May 24, after adding the requirement that owners of 15 or more funeral homes provide a bond, or series of bonds, of at least \$1 million, instead of \$500,000 or more as File 685 had required.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute Change of Reference

Yea 15 Nay 1

Appropriations Committee

Joint Favorable Substitute

Yea 51 Nay 1

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0